IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1427 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANDIP OMPRAKASH GUPTA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1427 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

MR KP RAWAL ASSTT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/06/2003

ORAL JUDGEMENT

At the outset, this Could would like to refer important observations in respect of "Personal liberty, a fundamental right" made by the Apex Court in case of

Chowdarapu Raghunandan [para-6 & 7, 2002 AIR SCW 1322] which reads as under :

"6. In Mohd. Subrati alias Mohd. Karim v. State of West Bengal [1973] 3 SCC 250, 256] this Court observed thus :-

"It must be remembered that the personal liberty of an individual has been given an honoured place in the fundamental rights which our Constitution has jealously protected against illegal and arbitrary deprivation, and that this Court has been entrusted with a duty and invested with a power to enforce that fundamental right."

7. Dealing with solitary act in a preventive detention matter, Krishna Iyer, J. in Anil Dey v. State of West Bengal [(1974) 4 SCC 514] observed as under :-

"A swallow cannot make a summer ordinarily, and a solitary fugitive act of criminality may not normally form the foundation for subjective satisfaction about the futuristic judgment that the delinquent was likely to repeat his offence and thereby prejudicilly affect the maintenance of supplied and services essential to community".

#. Heard learned advocate Ms.Subhadra Patel on behalf of the petitioner and learned AGP Mr.K.P.Rawal appearing for respondents.

In the present petition, Rule has been issue d on 14th February, 2003 making it returnable after six weeks.

#. By way of this petition, the petitioner has challenged the detention order dated 7th December, 2002 passed by the Police Commissioner, Surat City under the provisions of Section 3[1] of the PASA Act, 1985. Pursuant to the said detention order, the petitioner has been detained in District Jail, Junagadh. From the record, it transpires that against the petitioner, one offence came to be registered on date 13th October, 2002 at Kapodara Police Station being C.R.No.763 / 2002 under Section 66[1][b], 65[e][a] and 81 of the Prohibition Act. The petitioner has been arrested on 16th October, 2002 and thereafter, he was released on bail. The detaining authority has considered two unregistered offences dated 29th September, 2002 and 3rd November, 2002 as disclosed by the secret witnesses on 22nd November, 2002 and the same was verified by the detaining authority on 5th

December, 2002 and the second statement is dated 20th November, 2002 which came to be verified by the detaining authority on 5th December, 2002. The respondents detaining authority has filed affidavit-in-reply against the present petition.

#. Learned advocate Ms.S.G.Patel has raised various contentions to challenge the detention order but according to her, two contentions are enough to vitiate the order of detention. The first contention raised by her that only one solitary incident registered against the petitioner under the provisions of the Bombay Prohibition Act and on that basis the detention order has been passed by the detaining authority. In support of her contention, she has placed reliance on the decision of the Apex Court in case of DARPAN KUMAR SHARMA V. STATE OF T.N. AND OTHERS reported 2003 [2] SCC 313. The second contention raised by the learned advocate Ms.Patel to the effect that the statements of the secret witnesses were recorded by the sponsoring authority on 20th November, 2002 and 22nd November, 2002 respectively and the same were verified by the detaining authority on 5th December, 2002 and proposal forwarded on 23rd November, 2002 and therefore, when proposal was forwarded to the detaining authority, at that occasion, the statements of the secret witnesses have not been verified by the detaining authority. She, therefore, submitted that in the statements given by the secret witnesses, wherein said alleged two incidents disclosed, have not been factually verified by the detaining authority. In short, the submission is, the genuineness of the incident or credibility of the witnesses is required to be examined by the detaining authority, which has not been examined by the detaining authority, which amounts to non application of mind on the part of the detaining authority and therefore also, the order of detention is vitiated.

#. Learned AGP Mr.K.P.Rawal on behalf of the respondents while opposing the petition and supporting the detention order, submitted that the detaining authority has considered all three incidents against the petitioner at the time of passing of the detention order. He also submitted that the detention order passed on 7th December, 2002 and at that occasion, the detaining authority having material against the detenu which reflects that one registered offence under Bombay Prohibition Act and two unregistered offence under IPC and after considering the entire material, the detaining authority having reached subjective satisfaction that there is no other course upon for the detaining authority

except to exercise the powers under the provisions of the PASA, 1985. He also submitted that the detaining authority has applied his mind in respect of the materials placed before him and the detaining authority has also considered lesser drastic remedy under the Bombay Police Act and Code of Criminal Procedure, so also, the Bombay Prohibition Act and ultimately, the detaining authority felt that the lesser drastic remedies so available, are not sufficient and much effective unless the petitioner is immediately booked under the PASA, otherwise, the public order and peace will be disturbed by the petitioner. He also submitted that the detaining authority has rightly claimed the privilege under Section 9[2] of the PASA Act as both the witnesses are afraid for disclosing their names and address to the police authority and therefore, after considering the entire material before him and having reached to the subjective satisfaction, the order of detention came to be rightly passed by the detaining authority. Learned AGP Mr.Rawal has, in support of his say, relied on the decisions of the Apex Court in case of AMANULLA KHAN KUDEATALLA KHAN PATHAN V. STATE OF GUJARAT AND OTHERS reported in [1999] 5 SCC 613 and especially supplied the emphasis on the observations made in para-4 & 5 of the aforesaid decision. He, therefore, submitted that ultimately the detaining authority has to consider the degree of the actin which has been taken by the petitioner in the society and any kind of action which resulted into disturbance of public order and peace either that has been committed by the dangerous person or even by the bootlegger, the authority having powers under Section 3[4] of the PASA Act to pass such order of detention against such person. However, learned AGP Mr.Rawal also relied upon provisions of Section 2[b] and 2[c] of the Act, wherein the class "Bootlegger" and "Dangerous Person" is defined under the Act. Mr.Rawal has also placed reliance on Section 3[4] of the Act that if any person acting in any manner prejudicial to the maintenance of public order when such person is engaged in or is making preparation for engaging in any such activities, whether as a bootlegger or a dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order. Section 3[4] makes it clear in its explanation given by the statute. Therefore, in short, his submission is, it is not case of the solitary incident because another two unregistered offence have also been taken into consideration by the detaining authority while passing the order of detention. Therefore, after considering the material, the detaining authority having reached subjective satisfaction and that

subjective satisfaction cannot be interfered with by this Court while exercising the powers under Article 226 of the Constitution of India. He also submitted that said two unregistered offences are serious in nature and according to the narration of said two statements, when it was specifically made it clear that because of the activities of the petitioner, it has disturbed the public order and peace prejudicial to the interest of the society.

#. I have considered submissions made by the both the learned advocates for the parties. The fact remains that one registered offence recorded against the petitioner being C.R.No.763 / 2002 at Kapodara Police Station on 30th October, 2002 under the provisions of the Bombay Prohibition Act. As contended by the learned advocate Ms.S.G.Patel, in all four accused viz. present petitioner, Jayantibhai Jakshibhai Vagharar [Parmar], Vasantbhai Jakshibhai Vaghari [Parmar], Omprakash Thakurpasad Gupata were involved in the very offence referred above. According to the submissions, said Omprakash Thakurprasad Gupta is father of the present petitioner. The detaining authority has passed four orders of detention while considering the same set of facts against all four accused. Against said orders of detention, the remaining three accused viz. Jayantibhai Jakshibhai Vaghari [Parmar], Vasantbhai Jakshibhai Vaghari [Parmar], Omprakash Thakurpasad Gupata preferred a writ petitions being Special Civil Applications Nos.1400/ 2003, 1374 / 2003 and 587 / 2003 respectively. Learned advocate Ms.S.G.Patel has made a statement at bar before this Court that the orders of detentions passed against three accused who are said to have involved in offence registered vide C.R.No.763/2003 at Kapodara Police Station, have been quashed and set aside by this Court vide order dated 4th and 6th June, 2003 respectively. However, she asserted that since she has personally attended the matter i.e. SCA No.587/2003, she makes a statement that the impugned order of detention has been quashed and set aside by this Court only on the ground of one solitary incident kept in mind the detaining authority while passing the detention order. However, she submits that since the copy of the said order dated 6th June, 2003 passed by this Court is not available on computer center, the same could not be produced before this Court. Therefore, considering the statement made by the learned advocate Ms.Patel that the detention orders passed against the three accused, out of total four accused, involved in a very offence based on the very same set of facts, merely taking into consideration two unregistered offence as disclosed by

the secret witnesses and one registered offence, have been quashed and set aside by this Court on the ground of solitary incident. It may be appreciated that out of said three accused against whom the detention order passed and the same are set aside by this Court, one of the accused happens to be father of the present petitioner and therefore also, naturally this Court cannot take a different view in the matter once this Court has examined the issue and passed such order quashing and setting aside the detention orders. However, detailed submissions made by the learned AGP Mr.Rawal attempting to distinguish the facts while relying on the decision of the Apex Court in case of AMANULLA KHAN KUDEATALLA KHAN PATHAN, this Court is required to be examine the issues again on the basis of the submissions and objections raised by the learned AGP Mr.Rawal.

#. To appreciate the submissions of the learned AGP Mr.Rawal, it is pertinent to read the definitions of "Boot-legger" and "Dangerous Person" given under Section 2[b] and [c] of the PASA Act. At the same time, it is also required to read the provisions of Section 3[4] read with explanation. Looking to the detention order impugned in this petition, it is noticed that the same has been passed by the detaining authority branding the petitioner as "Bootlegger" and not as "Dangerous Person". But considering the entire scheme of the Act, either the bootlegger or the dangerous person whoever commits any offence or carrying out any activity which disturb the public tempo and peace of the society, then only, the detaining authority is entitled to pass appropriate order of detention under the PASA Act. Therefore, there is no dispute as to the powers of the detaining authority to pass the detention order against the bootlegger while keeping in mind the activities as "dangerous person". But looking to the facts of the present case, only one registered offence under Bombay Prohibition Act registered against the petitioner along with other two unregistered offence under IPC and as result thereof, the petitioner has been branded as the "Bootlegger". However, it is submission of the learned AGP Mr.Rawal that in a recent decision in case of DARPAN KUMAR SHARMA reported in [2003] 2 SCC 313 which has been relied by the learned advocate Ms.S.G.Patel, wherein the earlier decision of the Apex Court in case of AMANULLA KHAN KUDEATALLA KHAN PATHAN V. STATE OF GUJARAT AND OTHERS reported in [1999] 5 SCC 613 has not been considered and therefore, especially relied on decision in case of AMANULLA KHAN KUDEATALLA KHAN PATHAN V. STATE OF GUJARAT

AND OTHERS. I may be noted that this Court has considered both the decisions of the Apex Court and the distinction in the facts of these two judgments and the facts of this case, is mainly "registered offence" against the detenu. As transpires from the facts of the case of AMANULLA KHAN KUDEATALLA KHAN PATHAN, there was one solitary incident registered offence against the detenu. In the facts of the present case, there is only one registered offence recorded under the Bombay Prohibition Act, admittedly not under the IPC. On the other, the fact cannot be ignored that there are two unregistered offence which can attribute provisions of IPC, disclosed by the secret witnesses against the present petitioner. But it is pertinent to note that as such, no complaint is filed by the police authority against the petitioner. However, the observations made by the Apex Court in para-5 in case of DARPAN KR.SHARMA v. STATE OF T.N. reported [2003] 2 SCC 313 require to be appreciated which reads as under :-

"5. The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of a knife a sum of Rs.1000. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of public order. Under the definitions in the Act, it is stated that in the case of "Goonda" the acts prejudicial to public order are "when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order" (Section 2[a][iii]). The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act providing for preventive detention."

#. The Apex Court has considered the important question "whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree

and the extent of the reach of the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place of public order in jeopardy so as to bring the case within the purview of the Act providing for preventive detention. From the facts of the case before Apex Court, it transpires that only offence being Crime No.377 / 2002 under Section 379 of IPC registered against the detenu. Similarly, even in the case of AMANULLA KHAN KUDEATALLA KHAN PATHAN V. STATE OF GUJARAT AND OTHERS reported in [1999] 5 SCC 613, facts reveal that there was registered offence against the detenu being C.R.No.36/97 under Section 120-B, 387 and 506[2] of IPC. The taste laid down by the Apex Court in the aforesaid decision is quoted as under:

> "Even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or the same amounted to breach of law and order. The fallout and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society."

Thus, looking to the observations made by the Apex Court in para-5 in aforesaid case, the real taste is that the fallout and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. This being the real taste, whether the powers require to be exercised by the detaining authority under the PASA Act or not. In light of above observations, if the case on hands is examined, it becomes clear that there is only one registered offence under the Bombay Prohibition Act, which obviously, cannot disturb the peace of public tempo or place of public order and therefore, it cannot be considered to be prejudicial activities in any manner which may not prompt to say, that it would have disturbed the public peace or place of public order in the society. The allegation against the petitioner that he is selling liquor in the society but there is nothing compelling to the persons in the society to buy liquor from the

petitioner. Except this, no other activity which could disturb the public peace or the public order in the society is notice or recorded against the petitioner. Therefore, such activity which is said to be have been carrying out by the petitioner, can normally be covered by the ordinary law to prevent him and it cannot be considered beyond capacity of ordinary law to deal with him. The second aspect that there are two unregistered offence disclosed by the secret witnesses who were not intending to disclose their identity before the detenu concerned, against the petitioner - detenu and therefore, as a result thereof, their names did not disclose to the detenu. But the question is, if the responsible officer upon disclosure of two unregistered offence by the secret witness and having notice the seriousness of the offence which are said to have committed by the petitioner on the basis of the statement recorded by the police, as to why necessary prosecution not lodged against the petitioner detenu under the provisions of the IPC. It requires to be appreciated that the police officer and / or authority is competent enough and fully empowered under the law to deal with such person like petitioner under the ordinary law viz. IPC and other laws, upon disclosure of serious offence by the secret witnesses and as to why such course has not been adopted before passing of the detention order against the petitioner.

#. Similar aspect has been considered by the Apex Court in case of Chowdarapu Raghunandan reported in 2002 AIR SCW 1322. The Apex Court has considered that a solitary incident of smuggling, no allegation that detenu's past conduct involved anti social activities visiting foreign country twice as tourist. No conclusive proof that baggages containing contraband goods belong to the detenu. Investigation whether baggages belonged to another person pending, detention based on inchoate material is set aside. The relevant observations made by the Apex Court in para-14 and 21 are quoted as under :-

"14. It is true that in appropriate case, an inference could legitimately be drawn even from a single incident or smuggling that the person may indulge in smuggling activity but for that purpose antecedents and nature of the activities carried out by a person are required to be taken into consideration for reaching justifiable satisfaction that the person was engaged in smuggling and that with a view to prevent, it was necessary to detain him. It is also settled law that an order of preventive detention is founded

on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or of a seres of acts. It must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention. If there is non application of mind by the authority on this aspect, then the Court is required and is bound to protect the citizen's personal liberty which is guaranteed under the Constitution. Subjective satisfaction of the authority under the law is not absolute and should not be unreasonable. The question, therefore, would be from the past conduct of the petitioner as set out in the grounds of detention or other circumstances, whether reasonable inference could be drawn that he is likely to repeat such acts in the future. In the present case, past conduct of the petitioner is that he is Engineering graduate and at the relevant time he was Managing Director of a public limited company. There is no other allegation that he was involved in any other anti social activities. Only allegation is that he visited Singapore twice as a "Tourist". Admittedly, the petitioner has filed bail application in a criminal prosecution for the alleged offence narrating the fact that his so-called statement was not voluntary and was recorded under coercion. The baggages were not belonging to him and there was no tags on the same so as to connect him with the said baggages and the crime. At the time of hearing of this matter also, it is admitted that the baggages were without any tags. It is also an admitted fact that there is nothing on record to hold that the petitioner was involved in any smuggling activity. However, the learned Additional Solicitor General submitted that in the statement recorded by the Customs Department petitioner had admitted that previously he had visited Singapore twice as a "tourist" and therefore, it can be inferred that the petitioner might have indulged and was likely to indulge in such activities. This submission is far fetched and without any foundation. From the fact that a person had visited Singapore twice earlier as a "tourist", inference cannot be drawn that he was involved in smuggling activities or is likely to indulge in such activities in future. Hence,

from the facts stated above, it is totally unreasonable to arrive at a prognosis that the petitioner is likely to indulge in any such prejudicial activities.

21. In the above context, what is required to be seen is as to whether on the materials placed on record, it could reasonably be said to indicate any organised act or manifestation of organised activity or give room for an inference that the petitioner would continue to indulge in similar prejudicial activity warranting or necessitating the detention of the person to ensure that he does not repeat his activity in future. So far as the facts on record in this case are concerned, it is seen that a stand has been taken for the petitioner, at any rate, from the time of filing the bail application on 18-4-2001, that the baggage in question did not belong to him, that the earlier statement obtained was under threat, coercion and undue influence and that those baggage did not contain any tag also to connect the same with him. That apart the specific stand taken for the petitioner is also that the baggage containing the goods in question were in the name of one Babu with his ticket number and address and no action could be taken against him before recording a finding properly and deciding on the basis of any concrete material the ownership of the disputed baggage. All the more so when the Department itself has been after the said person also and the matter has not reached to any final conclusion. As for the grievance that these relevant materials have not been adverted to or considered by the Detaining Authority before ordering the detention the detention of the petitioner, in the counter-affidavit filed on behalf of the 1st respondent - detaining authority, it is admitted that investigation is still pending to ascertain the involvement and role of the other person but that may not have any significance or relevance in the teeth of the admission contained in the confessional statement of the petitioner and that at any rate the Detaining Authority was very much aware of those facts when the order of detention came to be passed."

#. I have also perused both the statements recorded by

the sponsoring authority, which was verified by the detaining authority. However, it is pertinent to note that the wordings and language used in both these statements appear to be a dictation given by the police officer to the secret witnesses, just mentioning different dates of the incidents. It, however, also appears that identical language has been used in both the statements declared by the secret witnesses, wherein, similar set of facts but different dates recorded by the police authority, that is, sponsoring authority and the same has been verified by the detaining authority without examining the credibility of said two witnesses who have disclosed these incidents before the sponsoring authority. It may be reminded that after all, the detention law is required to be strictly interpreted and to be exercised in its true letter and spirit as it directly relates to the fundamental rights and liberty of the citizens of this Country. If any activity that can be normally dealt with by the police authority under the ordinary law, the powers under the detention law such as PASA Act should not have been exercised by the detaining authority, but, under the circumstances, if the authority fails to curb such activities of the detenu by adopting the measures under the ordinary law or such activities beyond capacity of ordinary law, in such rare cases, powers under the detention law can be exercised by the detaining authority, otherwise, the authority will have free hands to pass the orders of detention against any person without having any satisfactory material against such person and the authority can arbitrarily pass order of detention even making a basis of a solitary incident registered under the ordinary law or taking into consideration unregistered offence that may be disclosed by any secret witness/s whose identity is not declared or their credibility is not tested by the sponsoring and verifying authority. This is not the clear object of the detention act and the object of the detention law that a person who is carrying an activities in the society which can disturb the public peace and / or public tempo at large which can disturb the entire public peace and if any immediate action is not taken, then he will disturb the public peace and will create an atmosphere of fear in the society and on such occasions, it is the duty of the detaining authority to consider whether this activity of the person can be controlled by any means of ordinary law and if not, order of detention can be passed under the PASA Act, 1985. These are the considerations before passing the detention order against any person. Merely, relying upon two unregistered offences disclosed by the secret witnesses in an identical manner before the sponsoring authority and the same verified by the

detaining authority, that too, without examining genuineness of the incidents or without examining the credibility of the witnesses, whether that statements are trustworthy or not. But in the instant case, prima facie, said statements, of which, the credibility not seem to have examined, are made basis for passing the detention order against the petitioner - detenu and therefore, it is nothing but clear non application of mind on the part of the detaining authority. Moreover, looking to the facts of this case, according to my opinion, when police authority having knowledge of the serious offence disclosed by the secret witnesses of two different dates though identity of said secret witnesses was not required to be disclosed to the detenu, upon disclosure of such two unregistered offence by the secret witnesses, the police authority could have lodged complaint and this Court fails to understand as to why the petitioner not immediately arrested the petitioner to prevent him from carrying out such similar activities for future time to come. This course could have been adopted by the police authority immediately after lodging of the complaint by arresting the petitioner under the provisions of the IPC. Both are the serious offence disclosed against the petitioner by said secret witnesses and the ordinary law provides a remedy for preventing the activities of the petitioner and in such circumstances, it is not understood that as to why such efforts have not been made by the sponsoring authority or detaining authority against the petitioner under the ordinary law. Therefore, according to my opinion, even considering the in all three incidents viz. one registered and two unregistered offence disclosed against the petitioner detenu, it can be considered that these offences were not beyond capacity of the ordinary law to deal with the petitioner. Therefore, contentions raised by the learned AGP Mr.K.P.Rawal cannot be accepted in view of the above discussion taking into consideration the taste and observations of the Apex Court in above referred two decisions. It is reiterated that the Apex Court has clearly held that even if solitary incident is really disturbing the public peace or tempo of the public and having prejudicial effect in the society, and on such occasion, if ordinary law is not helpful to curb such activities of any person, then certainly, the detaining authority is justified in passing the detention order. But the situation is not such, the detaining authority should not exercise the powers under the detention law. But in the instant case, this aspect has not been taken into account by the detaining authority while passing the detention order against the petitioner. Therefore, considering entire facts, especially the fact that only

one registered offence recorded against the present petitioner under the Bombay Prohibition Act and two unregistered offence disclosed by the secret witnesses against the petitioner which, admittedly not taken note of by the police authority and also considering the taste laid down by the Apex Court in above referred two cases in AMANULLA KHAN KUDEATALLA KHAN PATHAN V. STATE OF GUJARAT AND OTHERS and DARPAN KR.SHARMA v. STATE OF T.N. wherein the detaining authority had considered registered offence against the detenu by the detaining authority, in my opinion, the question is whether a solitary incident can be considered and further, the registered offence can be considered or such basis also includes unregistered offence also. But at this stage, in the facts and circumstances of this case, it is not necessary to dwell into this aspect considering the fact that it is not disputed by the learned AGP Mr.Rawal that the father of the detenu against whom also the order of detention was passed being the co-detenu in a very offence for same charges, has been quashed and set aside by this Court while passing the order in Special Civil Application No.587 / 2003 only on the ground considering solitary incident and therefore, according to my opinion, the order of detention is vitiated and the same deserves to be quashed and set aside.

#. For the foregoing reasons, the petition succeeds and the same is allowed. The order of detention dated 7th December, 2002 passed by the Police Commissioner, Surat City is vitiated and the same is hereby quashed and set aside. The detenu - SANDIP OMPRAKASH GUPTA who has been detained at District Jail, Junagadh be set at liberty forthwith if he is not required in any other case.

Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

Date : 11/6/2003 [H.K.RATHOD, J.]

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